

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND

The HON'BLE MS.JUSTICE P.T.ASHA

W.P.Nos.32108, 32794 and 32795 of 2014,
5648, 16801 and 16802 of 2018 and W.P. (MD) No.3207 of 2016

ASSOCIATION OF MANAGEMENT OF PRIVATE SCHOOLS (CBSE)
REP. BY ITS PRESIDENT, S.NAMASIVAYAM
ANGAPPA EDUCATIONAL TRUST HIGHER SECONDARY SCHOOL
RAJA ANNAIAMALAI CHETTIAR ROAD
COIMBATORE - 641 011.

... PETITIONER IN WP.NO.32108/2014

SRI VAGEESHA VIDHYASHRAM
REP. BY ITS CORRESPONDENT R.MADHAVACHARIAR
MELUR ROAD, SRIRANGAM, TRICHY-620006.

... PETITIONER IN WP.32794/2014 AND WP.32795/2014

ASSOCIATION OF MANAGEMENT OF PRIVATE SCHOOLS (CBSE)
REP BY ITS SECRETARY ATB.BOSE,
ANGAPPAN EDUCATIONAL TRUST HIGH. SEC. SCHOOL
RAJA ANNAMALAI CHETTIAR RD
COIMBATORE- 641 011.

... PETITIONER IN WP NO.5648 OF 2018 AND WP.16801/2018

ASSOCIATION OF MANAGEMENT OF PRIVATE SCHOOLS
(S.NO. 20 OF 2015)
REP. BY ITS SECRETARY, BIJU NAYARSUDARSAN
NO. 3 VIKAASA SCHOOL CAMPUS AARAPALAYAM CROSS
MADURAI - 625016

... PETITIONER IN WP.16802/2018

CBSE SCHOOLS MANAGEMENT ASSOCIATION
(CSMA) (REGN NO.88/2014)
NO.249 A, "GANAPATHIPUDUR STREET NO.3, SATHI MAIN ROAD,
COIMBATORE-641 006 REP.BY ITS SECRETARY

... PETITIONER IN WP(MD).3207/2016

VS

- 1 THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY
SCHOOL EDUCATION DEPARTMENT
FORT ST. GEORGE
CHENNAI.
- 2 THE DIRECTOR OF SCHOOL EDUCATION
DPI CAMPUS, COLLEGE ROAD
CHENNAI-6.
- 3 THE UNION OF INDIA
REP. BY ITS SECRETARY
MINISTRY OF HUMAN RESOURCE AND DEVELOPMENT
GOVERNMENT OF INDIA, NEW DELHI.
- 4 THE CENTRAL BOARD OF SECONDARY EDUCATION
REP. BY ITS CHAIRMAN, SHIKSHA KENDRA
NO.2 COMMUNITY CENTRE, PREET VIHAR
NEW DELHI - 110019.
- 5 THE CENTRAL BOARD OF SECONDARY EDUCATION
REP. BY ITS REGIONAL OFFICER
NEW NO.3 (OLD NO.1630-A), "J" BLOCK
16TH MAIN ROAD, ANNA NAGAR (WEST)
CHENNAI-40.

.... RESPONDENTS IN WP.32108/2014

- 1 THE SECRETARY TO THE GOVERNMENT,
MINISTRY OF HUMAN RESOURCES AND
DEVELOPMENT GOVERNMENT OF INDIA SHASTRI
BHAWAN NEW DELHI-110001.
- 2 THE CHAIRMAN
CENTRAL BOARD OF SECONDARY EDUCATION
SHIKSHA KENDRA NO.2 COMMUNITY CENTRE
PREET VIHAR NEW DELHI-110092.
- 3 THE PRINCIPAL SECRETARY TO THE
GOVERNMENT SCHOOL EDUCATION DEPARTMENT
GOVERNMENT OF TAMIL NADU FORT ST. GEORGE
CHENNAI-9.
- 4 THE DIRECTOR OF SCHOOL
EDUCATION COLLEGE ROAD CHENNAI-6.

5 THE CHIEF EDUCATIONAL OFFICER
MADURAI ROAD TRICHY-620008.

... RESPONDENT IN WP.32794/2014 AND WP.32795/2014

1 THE STATE OF TAMILNADU
REP BY ITS PRINCIPAL SECRETARY SCHOOL
EDUCATION DEPARTMENT FORT ST GEORGE
CHENNAI-9.

2 THE DIRECTOR OF SCHOOL
EDUCATION DPI CAMPUS COLLEGE ROAD
CHENNAI- 600 006.

... RESPONDENT IN WP.5648/2018
WP.16801/2018 AND WP.16802/2018

1 THE SECRETARY TO THE GOVERNMENT,
MINISTRY OF HUMAN RESOURCES AND
DEVELOPMENT GOVERNMENT OF INDIA SHASTRI
BHAWAN NEW DELHI-110001.

2 THE CHAIRMAN
CENTRAL BOARD OF SECONDARY EDUCATION
SHIKSHA KENDRA NO.2 COMMUNITY CENTRE
PREET VIHAR NEW DELHI-110092.

3 THE PRINCIPAL SECRETARY TO THE
GOVERNMENT SCHOOL EDUCATION DEPARTMENT
GOVERNMENT OF TAMIL NADU FORT ST. GEORGE
CHENNAI-9.

4 THE DIRECTOR OF SCHOOL
EDUCATION COLLEGE ROAD CHENNAI-6.

5 THE CHIEF EDUCATIONAL OFFICER
TRICHY.

... RESPONDENT IN WP (MD) NO.3207/2016

WP No.32108 of 2014:

Petition filed Under Article 226 of Constitution of India, to issue a Writ of Declaration or any other appropriate Writ, order or direction, declaring G.O.Ms.No.144 School Education (GE) Department dated 18.9.2014 as illegal, unconstitutional and ultra vires the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) and the Right of Children to Free and Compulsory Education Rules, 2010.

WP No.32794 of 2014

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of declaration declaring that the impugned amendment to Rule 12 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 issued vide GO Ms.No.144, School Education (GE) Department dated 18.09.2014 and published in the Tamil Nadu Government Gazette is illegal, unconstitutional and ultra vires the provisions of the Central Act No.35 of 2009.

WP No.32795 of 2014

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of certiorarified Mandamus Calling for the records comprised in letter dated 28.11.2014 in Na.Ka.No. 7419/A2/2014 issued by the 5th respondent and quash the same as being illegal, unconstitutional and ultra vires the provisions of the Central Act No.35 of 2009 and consequently forbear the respondents from taking any action in furtherance of the impugned letter.

WP No.5648 of 2018:

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of Certiorari, to Call for the records of the 2nd respondent in Na.ka.No. 005358/G1/E4/2018 dated 02.03.2018 and quash the same.

WP No.16801 of 2018:

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to Call for the records of the 1st respondent herein D.O. Letter No. 6920/ GL1 (2) 2018 dated 11.04.2018 and quash the same in so far as it relates to empowering the District Level Committees headed by Chief Educational Officer to collect information under the Right of Children to Free and Compulsory Education Act, 2009 and Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 and empowering the Chief Educational Officers to initiate action to prosecute the Educational Agencies and further direct the respondents and their sub-ordinate officers not to levy or collect penalty under Sec. 18(5) of the Right of Children to Free and Compulsory Education Act, 2009 from the members of the petitioner association.

WP No.16802 of 2018

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the

records of the 1st respondent herein D.O. Letter No. 6920/GL1 (2)/ 2018 dated 11.04.2018 and quash the same in so far as it relates to empowering the District Level Committee headed by Chief Educational Officer to collect information under the Right of Children to Free and Compulsory Education Act, 2009 and Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2010 and empowering the Chief Educational Officers to initiate action to prosecute the Educational Agencies and further direct the respondents and their sub-ordinate officers not to levy or collect penalty under Sec. 18(5) of the Right of Children to Free and Compulsory Education Act, 2009 from the members of the petitioner association.

WP(MD) .3207/2016:

Writ Petition filed Under Article 226 of Constitution of India, to issue a Writ of Declaration declaring that the impugned amendment to Rule 12 of the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 issued vide GO Ms.No.144, School Education (GE) dated 18.09.2014 and published in the Tamil Nadu Government Gazette and the consequent impugned proceedings of 5th respondent in NA.KA.NO.7419/A2/2014 dated 25.11.2014 as illegal, unconstitutional and ultra vires the provisions of the Central Act No.35 of 2009.

For Petitioners in : Mr.AR.L.Sundaresan
W.P.Nos.32108 of 2014 Senior Counsel
and 16802 of 2018 for M/s.L.Muralikrishnan

For Petitioners in : Mr.Satish Parasaran
W.P.Nos.32794 and Senior Counsel
32795 of 2014 for M/s.R.Parthasarathy

For Petitioners in : Ms.Hema Muralikrishnan
W.P.Nos.5648 and 16801
of 2018

For Petitioner in W.P. : Mr.R.Vishnu
(MD) No.3207 of 2016 for Mr.S.Srinivasa Raghavan

For 3rd respondent in : Mr.Venkatasamy Babu
W.P.No.32108 of 2014; Central Govt. Standing
1st respondent in Counsel
W.P.Nos.32794 and
32795 of 2014; 1st
respondent in W.P.
(MD) No.3207 of 2016

For Respondents 1 and : Mr.Aravindh Pandian
2 in W.P.No.32108 of Addl. Advocate General
2014; Respondents 3 to assisted by
5 in W.P.Nos.32794 and Mr.C.Munusamy
32795 of 2014; Spl. Government Pleader
Respondents 1 and 2 in (Education)
W.P.No.5648 of 2018;
Respondents 1 and 2 in
W.P.Nos.16801 and
16802 of 2018;
Respondents 3 to 5 in
W.P. (MD) No.3207 of
2016

For Respondents 4 and : Mr.G.Nagarajan
5 in W.P.No.32108 of
2014; 2nd respondent in
W.P.Nos.32794 and
32795 of 2014; 2nd
respondent in W.P.
(MD) No.3207 of 2016

COMMON ORDER

(Made by Ms.Indira Banerjee, Chief Justice)

In W.P.Nos.32108, 32794 and 32795 of 2014 and W.P. (MD) No.3207 of 2016, the petitioners are, inter alia, seeking a declaration that G.O.Ms.No.144, School Education (GE) Department, dated 18.9.2014 was illegal, unconstitutional and ultra vires the provisions of the Right of Children to Free and Compulsory Education Act, 2009, hereinafter referred to as "the RTE Act", and the Right of Children to Free and Compulsory Education Rules, 2010.

2. In W.P.No.5648 of 2018, the petitioner is challenging the Circular dated 2.3.2018 issued by the Director of School Education, calling upon the schools affiliated to the CBSE to

submit various particulars for the purpose of recognition under the RTE Act.

3. In W.P.Nos.16801 and 16802 of 2018, the challenge is to the D.O. Letter No.6920/GL1(2)/2018, dated 11.4.2018 issued by the Principal Secretary to Government, School Education Department, directing the District Collectors to constitute Committees at District Level headed by the Chief Educational Officer to inspect all the schools, particularly private schools, including schools affiliated to CBSE/ICSE/Other international boards.

4. It is the case of the petitioner association in W.P.No.32108 of 2014 that its members are schools in the State of Tamil Nadu affiliated to the Central Board of Secondary Education, hereinafter referred to as "CBSE". It is stated that the petitioner association has 94 members on its rolls. The object of the association is to provide a fraternal forum of private schools affiliated to the CBSE and to take steps regarding problems connected with education, teaching, profession and management in such schools.

5. The CBSE was originally formed and registered under the Societies Registration Act, 1860 on 2.1.1935. CBSE was later reconstituted with, inter alia, the objects of conducting examinations at the secondary stage and such other examinations as it might consider fit, subject to approval of the Controlling Authority. CBSE is controlled by the Government of India, Ministry of Human Resources and Development.

6. It is contended by the petitioners that education is a subject mentioned under Entry 65 of the Concurrent List (List III) of the Constitution of India.

7. Pursuant to the judgment of the Supreme Court in Unnikrishnan J.P. v. State of Andhra Pradesh, reported in (1993) 1 SCC 645, the Parliament enacted the Constitution (Eighty-sixth Amendment) Act, 2002 incorporating Article 21A of the Constitution in Part III. Article 21A, which is a fundamental right, provides: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

8. In exercise of its powers conferred by Articles 245 and 246 of the Constitution of India, Parliament enacted the RTE Act. The RTE Act casts a duty on the appropriate government to provide free and compulsory education to all children in the country in the age group of 6 to 14 years. "Appropriate government" has been defined in Section 2(a) of the RTE Act as follows:

"2. Definitions.- In this Act, unless the context

otherwise requires,-

(a) "appropriate Government" means-

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of-

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory"

9. In respect of a school established, owned or controlled by the Central Government or the Administrator of a Union Territory having no legislature, the appropriate government is the Central Government. In the case of all other schools, the appropriate government is the State Government and in the case of a Union Territory having legislature, the appropriate government is the Government of the Union Territory.

10. Section 2(n) of the RTE Act, which defines "school" is set out herein below for convenience:

"Section 2(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority."

11. Section 12 of the RTE Act provides as follows:

"Section 12. Extent of school's responsibility for free and compulsory education.-

(1) For the purposes of this Act, a school,-

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to

the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

12. On a reading of the RTE Act, it is amply clear that even unaided schools are obliged to admit underprivileged children of the locality and provide them free education. However, the cost of such education is to be borne by the appropriate government. Section 12(3) provides that every school shall provide such information, as may be required by the appropriate authority or the local authority, as the case might be. This information has a co-relation with the obligation to provide education and also the right to reimbursement of the costs of such education.

13. The petitioner contends that under Section 29 of the RTE Act, the curriculum and the affiliation procedure for elementary education is to be laid down by an academic authority to be specified by the appropriate government. The Secretary to Government, Ministry of Human Resource and Development has notified the National Council of Educational Research and

Training, commonly referred to as "NCERT" as the academic authority to lay down the curriculum and affiliation procedure. According to the petitioners, CBSE has also amended its bye-laws in furtherance of the objectives sought to be achieved by the RTE Act and all the schools affiliated to CBSE are obliged to follow the rules.

14. In exercise of powers conferred by Section 38(1) of the RTE Act, the Government of Tamil Nadu framed the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011. Rule 7 of the said Rules provides as follows:

"Rule 7. Maintenance of records of children by Local Authority.-

(1) Every local authority shall maintain a record of all children in its jurisdiction, through a household survey from their birth till they attain the age of 14 years and of children with disabilities till they attain the age of 18 years and shall maintain such other particulars in respect of each child so as to monitor his enrolment, attendance, learning achievement and transition to next higher classes.

(2) The record, referred to in sub-rule (1) shall be updated annually.

(3) The record referred to in sub-rule (1) shall be maintained transparently and kept in a manner accessible to the general public.

(4) The record referred to in sub-rule (1) shall in respect of every child include, -

- (a) name, sex, date of birth, place of birth;
- (b) name, address, occupation of parent or guardian;
- (c) school or anganwadi centre that the child attends;
- (d) present address of the child;
- (e) class in which the child is studying and if education is discontinued the cause for such discontinuance;
- (f) whether the child belongs to weaker section;
- (g) whether the child belongs to disadvantaged group;
- (h) whether the child requires special facilities or residential facilities on account of (i) migration and sparse population; (ii) age appropriate admission; and (iii) disability."

15. By the impugned G.O.Ms.No.144, School Education (GE) Department, dated 18.9.2014, the following proviso is added to the Explanation under Rule 12:

"The Director of School Education ... in the case of Schools affiliated to Boards other than the State Board of School Examinations (Secondary) and State Board of School Examinations (Higher Secondary), Government of Tamil Nadu."

16. According to the petitioners, the Principal Secretary, School Education Department has assumed itself to be the "appropriate government" in case of schools affiliated to CBSE and notified the Director of School Education to be the competent authority under the RTE Act in respect of the CBSE affiliated schools. It is contended that such action by the first respondent is in excess of powers and jurisdiction, since the State Government is not the appropriate government in respect of schools affiliated to the CBSE under the RTE Act.

17. In course of hearing, counsel appearing on behalf of the petitioners expressed apprehension that the Director of School Education might interfere with the syllabus and curriculum followed by schools affiliated to the CBSE as per the CBSE guidelines. By reason of incorporation of Director of School Education as the competent authority in respect of schools affiliated to Boards, such as CBSE, it is patently clear that the competent authority under the Rules cannot interfere with the syllabus or curriculum of a school affiliated to CBSE. The function of the competent authority is to ensure that these schools follow the Rules and Regulations of CBSE and in addition, conform to requisite building regulations and safety norms.

18. It is the case of the State Government that the contention of the petitioners that the schools affiliated to the CBSE are administered and controlled by the CBSE and can, therefore, be said to be controlled and administered by the Central Government is fallacious. The CBSE is only a Board of Examination which prescribes the syllabus for examinations conducted by the CBSE. These schools are not schools administered or controlled by the Central Government. Even schools affiliated to the CBSE have to get a certificate of recognition from the State Government which, in fact, is a prerequisite for seeking affiliation to the CBSE.

19. A close reading of Section 2(a) of the RTE Act would show that the State Government is alone the appropriate authority for all the private schools established within the territory of the State. CBSE schools are private schools for all purposes and can never, by any stretch of imagination, claim to be established, owned or controlled by the Central Government.

20. It is further stated that pursuant to the directions of this Court in W.P.No.18610 of 2017, Inter-departmental Committees headed by the Chief Educational Officers were formed to inspect all private schools in the districts, which includes schools affiliated to the CBSE, and to ensure that the schools conform to the requisite building regulations and safety norms.

21. There can be no doubt that any private school to be established in the State has to apply for permission and/or no objection from the State Government as mandated under the Tamil Nadu Private Schools (Regulation) Act, 1973 and the RTE Act. However, when the State Government recognizes a school which is affiliated to CBSE and/or permits a school to seek affiliation from CBSE, the State Government necessarily gives its approval to the school concerned to follow the syllabus and curriculum prescribed by CBSE. It cannot interfere with the syllabus.

22. The Rules and Regulations of CBSE, as contained in its bye-laws, have to be followed by such schools. The schools are required to have the infrastructure as prescribed and provide the requisite facilities as prescribed. However, these Rules do not prevent the State authorities from ensuring that the rules and regulations are complied with; that the school is run in hygienic conditions; that the requisite safety norms for children are followed; and that the schools are mal-administered under the garb of administration.

23. The only apprehension expressed in these writ petitions is with regard to interference with the curriculum and syllabus. It is made clear that the State Authorities cannot and shall not interfere with the syllabus and curriculum.

24. Needless to mention that the question of whether the State Government has the power to regulate fees chargeable by private schools affiliated to CBSE shall abide by the result of the proceedings before the Supreme Court in Civil Appeal No.5316 of 2016. We make it absolutely clear that we have not gone into this issue.

25. In respect of W.P.Nos.16801 and 16802 of 2018, the costs imposed by the Director of School Education are set aside, since a stay was in force. The schools concerned will submit the forms for application within three weeks from the date of receipt of a copy of this order and a decision thereon will be taken in accordance with law.

The writ petitions are disposed of accordingly. No costs. Consequently, W.M.P.Nos.6986, 6987, 6988, 19168, 19987, 19988, 19989, 19990, 19991 and 19992 of 2018 are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TO:

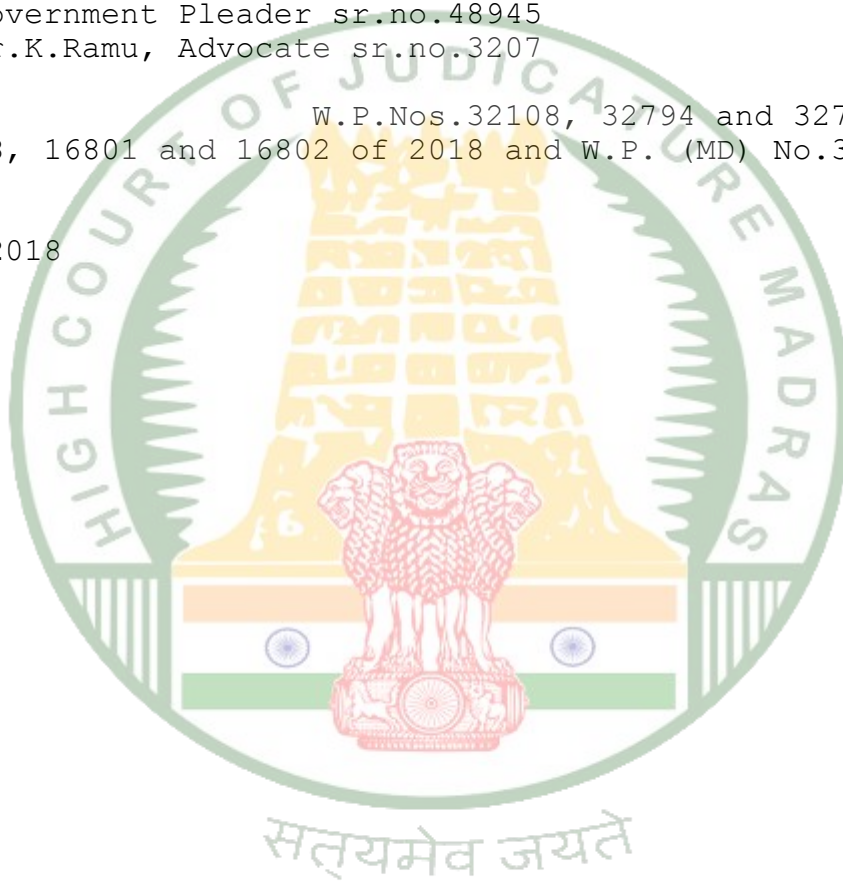
- 1 THE SECRETARY TO THE GOVERNMENT,
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- 6 THE CHIEF EDUCATIONAL OFFICER,
TIRUCHY.

7. THE REGIONAL OFFICER,
CENTRAL BOARD OF SECONDARY EDUCATION,
NEW NO.3 (OLD NO.1630-A) "J"BLOCK
16th MAIN ROAD, ANNA NAGAR (WEST),
CHENNAI-40.

+1cc to Mr.G.Nagarajan, Advocate sr.no.47967
+2cc to Mr.Venkataswamy Babu, Advocate sr.no.47960,47959
+1cc to Mr.R.Parthasarathy, Advocate sr.no.48180
+2cc to Mr.Muralikrishnan, Advocate sr.no.48241
+1cc to Government Pleader sr.no.48945
+1cc to Mr.K.Ramu, Advocate sr.no.3207

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